

**UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT**

<b>ADVANCED MASONRY ASSOCIATES, LLC</b>	)	
	)	
<b>Petitioner/Cross-Respondent</b>	)	
	)	
<b>v.</b>	)	<b>Nos. 18-11931</b>
	)	<b>18-12449</b>
<b>NATIONAL LABOR RELATIONS BOARD</b>	)	
	)	<b>Board Case No.</b>
<b>Respondent/Cross-Petitioner</b>	)	<b>12-CA-176715</b>
	)	

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<b>ADVANCED MASONRY ASSOCIATES, LLC</b>	)	
	)	
<b>Petitioner/Cross-Respondent</b>	)	
	)	
<b>v.</b>	)	<b>Nos. 18-14163</b>
	)	<b>18-14400</b>
<b>NATIONAL LABOR RELATIONS BOARD</b>	)	
	)	<b>Board Case No.</b>
<b>Respondent/Cross-Petitioner</b>	)	<b>12-CA-221114</b>
	)	

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**MOTION OF THE NATIONAL  
LABOR RELATIONS BOARD TO CONSOLIDATE  
CASES FOR ORAL ARGUMENT**

To the Honorable, the Judges of the United States  
Court of Appeals for the Eleventh Circuit:

The National Labor Relations Board (“the Board”), by its Assistant  
General Counsel, respectfully moves the Court to consolidate the above-  
captioned cases. In support, the Board shows as follows:

1. On April 13, 2018, the Board issued its Decision, Order, and Direction against Advanced Masonry Associates, LLC (“the Company”) in consolidated unfair-labor-practice and representation proceedings (Board Case Nos. 12-CA-176715 and 12-RC-175179), reported at 366 NLRB No. 57. In that consolidated decision, the Board found that the Company unlawfully: (1) threatened wage reductions if employees selected Bricklayers and Allied Craft Workers, Local 8 Southeast (“the Union”) as their bargaining representative, (2) suspended and discharged two employees because one supported the Union, and (3) more strictly enforced its fall-protection policy against employees because of their union activities, and issued an Order remedying those unfair labor practices. In the same decision, the Board resolved several objections to conduct in a representation election among the Company’s employees, as well as several challenges to ballots cast in that election. The Board overruled nine of the ballot challenges and ordered that the ballots be opened and counted. Thereafter, the ballots were counted and the Union won the election and was certified as the representative of the Company’s employees.

2. The Company petitioned for review of the Board’s unfair-labor-practice Order, and the Board filed a cross-application for enforcement. That Order is the subject of the case currently pending before the Court in

Case Nos. 18-11931 and 18-12449. That case has been fully briefed and the Court has tentatively set argument for the week of May 13, 2019, in Miami, Florida.

3. The portion of the Board's April 13 Decision concerning the representation election was not directly appealable. Therefore, the Company refused to recognize or bargain with the Union in order to challenge its certification as bargaining representative.<sup>1</sup> On August 17, 2018, the Board issued its Decision and Order in Board Case No. 12-CA-221114, finding that the Company unlawfully refused to recognize and bargain with the Union. That Order is the subject of the case currently pending before the Court in Case Nos. 18-14163 and 18-14400. The Company's brief was filed on January 2, 2019, and the Board filed its brief today.

4. The Company's only defense to the refusal-to-bargain violation in the Board's August 17 Order is the contention that the Union was improperly certified because the Board erroneously overruled nine

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<sup>1</sup> Representation cases are not directly appealable. *See Boire v. Greyhound Corp.*, 376 U.S. 473, 476-77 (1964) ("Board orders in certification proceedings . . . are not directly reviewable in the courts"). Instead, Congress established an indirect method of review: an employer who opposes an election order can refuse to bargain with the certified union, and the election order is then reviewable in a proceeding on the unfair-labor-practice charge for refusal to bargain. *See Cooper/T. Smith, Inc. v. NLRB*, 177 F.3d 1259, 1261 n.1 (11th Cir. 1999).

determinative challenges to ballots cast in the representation election.

Because the initial tally of ballots was tied, and each of the nine ballots at issue favored union representation, the Union's certification was valid if the Board correctly overruled even one of the Company's ballot challenges.

The Board overruled two challenges based on the two unlawful-discharge findings in its April 13 Order.

5. As just described, the merits of two of the Board's unfair-labor-practice findings before the Court in Case Nos. 18-11931 and 18-12449 and two of its ballot-challenge resolutions before the Court in Case Nos. 18-14163 and 18-14400 overlap completely. Specifically, if the Court upholds the Board's finding that the Company unlawfully discharge two employees, then the two employees' ballots should be counted. Likewise, if the Court reverses the Board and holds that the Company lawfully discharged the two employees, then they would not have been entitled to vote in the election. For that reason, a decision in either case before the Court may affect the resolution of the other. Indeed, should the Court enforce the Board's April 13 Order in its entirety, the Board will be entitled to enforcement of its August 17 Order.

6. In light of the above, the Board believes that consolidating the two cases for oral argument will promote judicial economy. Only one

judicial panel will be required to familiarize itself with the intertwined procedural history, shared facts, and overlapping legal issues involved in the two matters. Consolidating the cases for argument will also eliminate unnecessary delay.

WHEREFORE, the Board respectfully requests that the Court consolidate these related cases (Nos. 18-11931, 18-12449, 18-14163, and 16-14400) for oral argument.

/s/ Linda Dreeben  
Linda Dreeben  
Deputy Associate General Counsel  
NATIONAL LABOR RELATIONS BOARD  
1015 Half Street, SE  
Washington, DC 20570  
(202) 273-2960

Dated at Washington, DC  
this 15th day of February 2019

**UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT**

ADVANCED MASONRY ASSOCIATES, LLC	:	
d/b/a ADVANCE MASONRY SYSTEMS	:	
	:	
Petitioner/Cross-Respondent	:	No. 18-14163-G
	:	
v.	:	
	:	Board Case Nos.:
NATIONAL LABOR RELATIONS BOARD	:	12-CA-221114
	:	
Respondent/Cross-Petitioner	:	

**CERTIFICATE OF INTERESTED PERSONS AND  
CORPORATE DISCLOSURE STATEMENT**

Pursuant to Fed. R. App. P. 26.1 and Local Rule 26.1-1, the National Labor Relations Board, by its Deputy Associate General Counsel, hereby certifies that the following persons and entities have an interest in the outcome of this case:

1. Acevedo, Luis, Advanced Masonry Employee
2. Advanced Masonry Associates, LLC, Petitioner
3. Baker, Robert, Advanced Masonry Employee
4. Barlow, Jacob, Advanced Masonry Employee
5. Bricklayers and Allied Craftworkers Local 8 Southeast, Charging Party
6. Clark, Jeremy, Advanced Masonry Employee
7. Cohen, David , Regional Director, Region 12, NLRB
8. Collins, Valerie L., Attorney, NLRB
9. Dreeben, Linda, Deputy Associate General Counsel, NLRB

10. France, Mark, Advanced Masonry Employee
11. Ferrell, Amy, Assistant to Regional Director, NLRB
12. Greenlee, Forest, Advanced Masonry Employee
13. Harvey, Robert, Advanced Masonry Employee
14. Hearing, Gregory A., Thompson, Sizemore, Gonzales & Hearing, P.A.
15. Hickey, Dustin, Advanced Masonry Employee
16. Jason, Meredith, Managing Supervisor, NLRB
17. Karp, Ronald D., Advanced Masonry Associates, LLC d/b/a Advanced  
Masonry Systems
18. Kaplan, Marvin, Board Member, NLRB
19. Kyle, John W., Deputy General Counsel, NLRB
20. Leonard, Caroline, Field Attorney, NLRB
21. McFerran, Lauren, Board Member, NLRB
22. Morrison, Denise C., Supervisory Field Examiner, NLRB
23. Pearce, Mark Gaston , Board Member, NLRB
24. Pearson, Raymond, Advanced Masonry Employee
25. Pietsch, Robert, Advanced Masonry Employee
26. Reed, George, Advanced Masonry Employee
27. Ring, John F., Board Chairman, NLRB
28. Robb, Peter B., General Counsel, NLRB

29. Rosas, Michael A., Administrative Law Judge
30. Smith, John, Advanced Masonry Employee
31. Smith, Marvin Jay, Bricklayers and Allied Craftworkers, Local 8  
Southeast
32. Stevenson, Walter, Advanced Masonry Employee
33. Thomas, Charles J., Thompson, Sizemore, Gonzales & Hearing, P.A.
34. Vol, Kira Dellinger, Supervisory Attorney, NLRB
35. Walker, Kimberly C., Kimberly C. Walker, P.C., counsel for Bricklayers  
and Allied Craftworkers, Local 8 Southeast
36. Wrench, David, Advanced Masonry Employee

/s/ Linda Dreeben

Linda Dreeben  
Deputy Associate General Counsel  
National Labor Relations Board  
1015 Half Street, S.E.  
Washington, D.C. 20570

Dated at Washington, D.C.  
this 15th day of February, 2019



**UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT**

ADVANCED MASONRY ASSOCIATES, LLC	*
	*
Petitioner/Cross-Respondent	* Nos. 18-14163
	* 18-14400
v.	*
	* Board Case No.
NATIONAL LABOR RELATIONS BOARD	* 12-CA-22114
	*
Respondent/Cross-Petitioner	*
	*

**CERTIFICATE OF COMPLIANCE**

Pursuant to Federal Rule of Appellate Procedure 32(a)(7)(C), the Board certifies that its motion contains 695 words of proportionally-spaced, 14-point type, and the word processing system used was Microsoft Word 2006.

/s/Linda Dreeben  
Linda Dreeben  
Deputy Associate General Counsel  
National Labor Relations Board  
1015 Half Street, SE  
Washington, DC 20570  
(202) 273-2960

Dated at Washington, DC  
this 15th day of February, 2019

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<b>NATIONAL LABOR RELATIONS BOARD</b>	)	
	)	<b>Board Case No.</b>
<b>Respondent/Cross-Petitioner</b>	)	<b>12-CA-176715</b>
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<b>NATIONAL LABOR RELATIONS BOARD</b>	)	
	)	<b>Board Case No.</b>
<b>Respondent/Cross-Petitioner</b>	)	<b>12-CA-221114</b>
_____	)	

**CERTIFICATE OF SERVICE**

I hereby certify that on February 15, 2019, I electronically filed the foregoing motion with the Clerk of the Court for the United States Court of Appeals for the Eleventh Circuit by using the appellate CM/ECF system.

I certify foregoing document was served on all those parties or their counsel of record through the CM/ECF system if they are registered users or, if they are not by serving a true and correct copy at the address listed below:

Gregory A. Hearing  
Charles J. Thomas  
Thompson Sizemore Gonzalez & Hearing, PA  
201 N FRANKLIN ST STE 1600  
TAMPA, FL 33602

/s/ Linda Dreeben  
Linda Dreeben  
Deputy Associate General Counsel  
National Labor Relations Board  
1015 Half Street, SE  
Washington, DC 20570  
(202) 273-2960

Dated at Washington, DC  
this 15th day of February, 2019